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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,463	10/27/2003	Rosemarie P. Denicola	PA-0019-L	2514

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EXAMINER

NGUYEN, TRINH T

ART UNIT

PAPER NUMBER

3644

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/694,463

Applicant(s)

DENICOLA, ROSEMARIE P.

Examiner

Trinh T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE dated 12/13/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 December 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination under 37 CFR 1.114 After Final Rejection

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/13/06 has been entered.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-10,13,14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to

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one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In this case, the claim 1 (currently amended) indicates "a continuous and contiguous tubular substantially non-rigid sheet liner"; however, it is noted that the instant specification does not disclose and/or require such limitation. Pages 2, 3, and 7 of the instant specification only disclose and/or require a continuous but not contiguous tubular substantially non-rigid sheet liner.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-10,13,14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: the phrase "a continuous and contiguous tubular substantially non-rigid sheet liner" is unclear since there is no support in the specification.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, and 6-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Henry (US 5241784).

For claims 1, 9 and 10, Henry discloses a protection device comprising: a continuous and contiguous plastic tubular substantially non-rigid sheet liner with closed

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bottom end and open top end and a plurality of apertures wherein the apertures are positioned in an alternating anti-parallel orientation (see Figure 6) and the apertures are capable of preventing passage of vermin and permitting passage of water (Note that the Examiner is interpreting the terms "continuous" as "attached together in repeated units" and "contiguous" as "bordering, adjoining, abutting, adjacent, neighboring" as defined in *The American Heritage Dictionary of the English Language, Fourth Edition* copyright © 2000 by Houghton Mifflin Company and *The Random House Unabridged Dictionary*, © Random House, Inc. 2006 (on line version at Dictionary.com)).

For claim 6, Henry further discloses a plurality rows of apertures extending generally from the top end to the bottom end.

For claim 7, Henry further discloses a plurality of diagonally shaped apertures.

For claim 8, Henry further discloses alternating rows of diagonally shaped apertures wherein the diagonal shape is generally oriented from the top end to the bottom end in a left to right direction in a first row and wherein the diagonal shape is generally oriented from the top end to the bottom end in a right to left direction in a second row.

9. Claims 1,2,4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Takita (US 5564223).

For claim 1, Takita discloses a protection device comprising: a continuous and contiguous plastic tubular substantially non-rigid sheet liner with closed bottom end and open top end and a plurality of apertures wherein the apertures are positioned in an alternating anti-parallel orientation (see Figure 1A attached at the end of this office

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action, note that the parallel lines of the apertures are crossed and therefore, it is anti-parallel oriented).

For claims 2, 4, and 5, Takita further discloses a closure means wherein the closure means is a tie (10).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henry (US 5241784) in view of Beers (US 1464801).

As described above, Henry discloses most of the claimed invention except for an anchor means.

Beers teaches a concept of using post member (3) as an anchor means. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Henry so as to include the use of an anchor means, in a similar manner as taught in Beers, since to do so would allow the user to anchor the device in a more stable position and/or location and thus prevent the device from tipping over.

12. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henry (US 5241784) in view of Anderson (US 4628634).

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As described above, Henry further discloses the steps of inserting of a plant into the device and inserting of soil into the device. However, Henry lacks the step of inserting the device into the ground.

Anderson teaches a similar device as that of Henry in which Anderson discloses a step of inserting the device into the ground (see Figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Henry so as to include the step of inserting the device into the ground, in a similar manner as taught in Anderson, since inserting the device into the ground would allow the user to replant the device more easily and efficiently.

Response to Arguments

13. Applicant's arguments filed 12/13/06 have been fully considered but they are not persuasive.

14. Applicant argues that Henry does not disclose a continuous and contiguous plastic tubular substantially non-rigid sheet liner, Applicant's argument is acknowledged. However, it is noted that the Examiner is interpreting the terms "continuous" as "attached together in repeated units" and "contiguous" as "bordering, adjoining, abutting, adjacent, neighboring" as defined in *The American Heritage Dictionary of the English Language, Fourth Edition* copyright © 2000 by Houghton Mifflin Company and *The Random House Unabridged Dictionary, © Random House, Inc. 2006* (on line version at Dictionary.com). Therefore, as shown in Figure 2, Henry does disclose a continuous and contiguous plastic tubular substantially non-rigid sheet liner (10,20,40).


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15. Applicant further argues that Takita does not disclose antiparallel orientation of the apertures, Applicant's argument is acknowledged. However, it is noted that Figure 1A (attached at the end of this office action) shows the antiparallel orientation (note that the parallel lines of the apertures are crossed and therefore, it is anti-parallel oriented) of the apertures.

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M). The examiner's supervisor, Teri Luu can be reached on (571) 272-7045 for the purpose of status inquiry only. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trinh T Nguyen
Primary Examiner
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12/27/06

FIG. 1

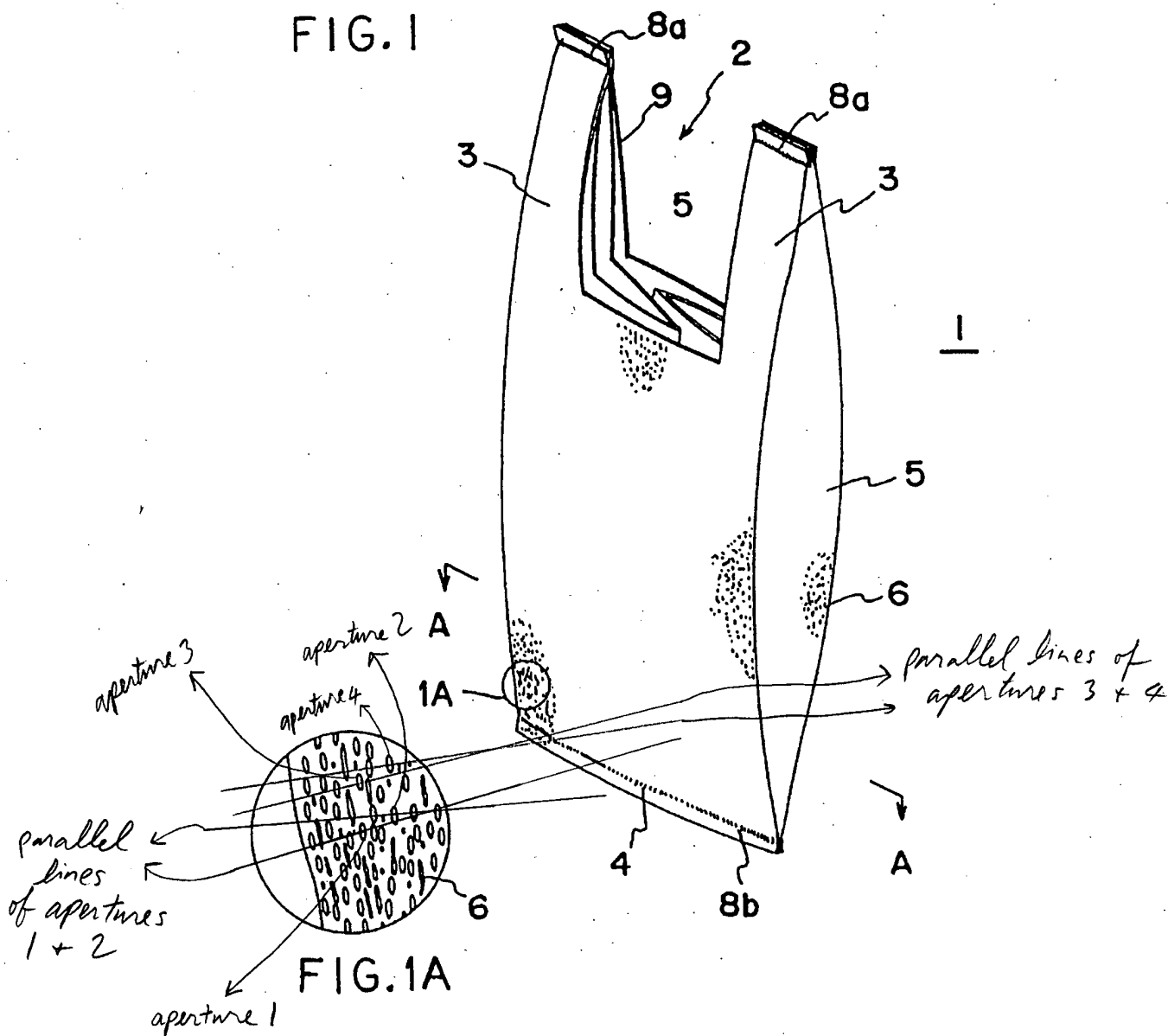


FIG. 2

